



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 13-00319
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: Brian Conway, Personal Representative

February 25, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had 12 delinquent debts totaling \$1,414,874, identified on the Statement of Reasons (SOR). Applicant repaid one small debt and is making payments on his tax debts. Applicant failed to mitigate the remaining delinquent accounts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his electronic Security Clearance Application (e-QIP) on June 14, 2013. On October 29, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on December 2, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 21, 2014. A notice of hearing was issued to Applicant on January 21, 2014, scheduling a hearing for February 10, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 14, which were admitted without objection. Applicant testified on his own behalf, called one witness, and offered Applicant's Exhibits (AE) A and B, which were admitted into the record without objection. Applicant requested that the record be left open to allow him to submit additional evidence and his request was granted. On February 18, 2014, Applicant presented additional exhibits, marked AE C through AE H. Department Counsel had no objections to AE C through AE H, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on February 19, 2014.

Findings of Fact

Applicant is 46 years old. He is divorced and has no children. He has worked for a government contractor since 2002 and seeks a security clearance in connection with that employment. He possesses a bachelor's degree. (GE 6.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified 12 delinquent debts totaling \$1,414,874. Applicant's debts appear in credit reports entered into evidence. Applicant admitted all of the debts as alleged in subparagraphs 1.a through 1.i. (Answer; GE 7; GE 9; GE 12; GE 14.)

Applicant attributes his financial delinquencies to his decision to invest in three real estate properties and the subsequent decline in the real estate market. Applicant purchased his first investment property in 2004 for \$400,000. He put 5% down, and financed the rest through two loans: a first mortgage of \$322,000¹ and a second mortgage of approximately \$50,000.² In 2006, he purchased a second investment property for approximately \$450,000. He put 5% down, and financed the rest through two loans: a first mortgage of \$396,000³ and a second mortgage of approximately \$50,000. He also purchased a third property, his personal residence, in 2006. He bought it for approximately \$500,000. He put 5% of the purchase price down, and financed the rest through two loans: a first mortgage of \$437,000⁴ and a second of approximately \$57,000.⁵ All of Applicant's mortgages were "interest only, five-year balloon types." (GE 8; GE 10; GE 14; AE H; Tr. 35-49, 51, 59-63, 73-83.)

¹ Alleged in SOR subparagraph 1.i.

² Applicant was unable to discern to which investment property the second mortgages alleged in SOR subparagraphs 1.d and 1.j pertained.

³ Alleged in SOR subparagraph 1.e.

⁴ Alleged in SOR subparagraph 1.g.

⁵ Alleged in SOR subparagraph 1.k.

Applicant rented out the first property. However, his tenant vacated the property shortly after he purchased his third property in 2006. At that time, Applicant was listed the properties for sale but the real estate market crashed. He owed more on each of the mortgages than the properties were worth and was unable to short-sell the properties. He attempted to use credit cards to make ends meet during this time. In December 2007 Applicant's first property was foreclosed upon. By the end of 2008, the mortgage holders on each of the three first mortgages had foreclosed upon the secured properties. The second mortgages all remain outstanding. Applicant testified that he intends to contact the second mortgage holders and repay these debts, but that he currently does not have the financial resources to address those debts at the current time. (GE 8; GE 10; GE 11; GE 14; AE H; Tr. 59-63, 73-83.)

Appellant is alleged to be indebted on two Federal tax liens in the amounts of \$19,081 and \$51,513, respectively.⁶ Applicant testified that as his properties were foreclosed upon, he failed to adjust his federal tax withholdings. This resulted in unpaid tax delinquencies for tax years 2008, 2009, and 2010. He presented documentation that shows he has an installment agreement to repay his back taxes. Applicant initially entered into an installment agreement with the IRS to repay \$1,870 per month until his debt was satisfied. He struggled to meet his payments and requested that the repayment plan be modified. Applicant documented that he made monthly payments of \$900 beginning February 2013 through January 2014. His payments were set to increase to \$1,000 per month on February 20, 2014. He currently owes approximately \$70,000 on his delinquent tax obligations. He hopes to have it repaid by 2016, when he will be able to address some of this other delinquent accounts. (GE 7; GE 8; GE 9; GE 10; GE 11; GE 14; AE A; AE B; AE E; Tr. 51-56, 64, 68, 81-83.)

In addition to Applicant's tax debt and real estate debt, he has four other past due accounts identified on the SOR including: a utility debt of \$100;⁷ a credit card debt of \$11,705;⁸ a delinquent telephone bill of \$455;⁹ and a second delinquent credit card totaling \$18,041.¹⁰ Applicant repaid the \$100 utility bill on February 10, 2014, as documented in printouts of online statements. For the phone bill, he presented a cancelled check that shows he made a payment of \$80.34 on September 22, 2012. He indicated that this creditor is requesting \$200 to settle the debt. He failed to produce documentation that he paid the \$200 requested to satisfy the phone bill. The other two accounts remain outstanding. (GE 7; GE 9; GE 2; GE 14; AE B; AE C; AE D; AE F; Tr. 56-59, 62-67, 70-72.)

Applicant testified that he earns approximately \$175,000 per year. His personal financial statement completed February 8, 2014, shows he has a monthly remainder of \$1,139. He testified that he has addressed two other delinquent debts that he was able to settle for less than the amount owed. He hoped to reach settlements with his remaining creditors after he repays his tax debt. He estimated that it will be three to five

⁶ As stated in SOR subparagraphs 1.a and 1.b.

⁷ As stated in SOR subparagraphs 1.c.

⁸ As stated in SOR subparagraphs 1.f.

⁹ As stated in SOR subparagraphs 1.h.

¹⁰ As stated in SOR subparagraphs 1.i.

years before he settles all of his debts. He has had no formal financial counseling. (AE A; AE H; Tr. 63-64, 68.)

Applicant is respected for his honesty, trustworthiness, and integrity by his professional contacts. His performance appraisals reflect he is a valued employee. (AE G; Tr. 35-49.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching the decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR alleges that Applicant incurred approximately \$1,414,874 in delinquent debt. The debts have been delinquent since 2007 and 2008. While Applicant satisfied the utility debt for \$100, and he is making payments on his tax delinquencies, in its entirety, the Government has established its *prima facie* case against Applicant. The evidence shows Applicant’s “inability or unwillingness to satisfy” his second mortgages, phone bills and credit card debt. He has an overall “history of not meeting financial obligations.”

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In this case, the economic downturn in the real estate market, an event beyond Applicant's control, contributed to his financial difficulties. He has addressed two debts not listed on the SOR, satisfied the \$100 debt listed in 1.c, and is making payments on his tax debts in 1.a and 1.b. These actions show some responsibility in addressing his delinquencies. He no longer has financial liabilities for the three first mortgages that were foreclosed upon by the lenders. However, he has a significant monthly remainder that is not currently being applied toward his remaining delinquent debts. He was unable to articulate why he had waited until the week prior to the hearing to pay off the small \$100 utility debt. He failed to produce proof he satisfied the relatively small delinquent phone bill. He has no concrete plan to address his remaining delinquencies, other than to wait until his tax debts are resolved, despite his significant monthly remainder. While Applicant receives some credit for the mitigating evidence in the record, it is not sufficient to overcome the concerns raised by his conduct.

The Appeal Board has held, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹¹ Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."¹² Applicant's ongoing decision not to address his remaining debt in a meaningful manner reflects poorly on his current judgment, reliability, trustworthiness, and ability to protect classified information. I cannot find that financial problems are unlikely to recur. He has not established that the problem is being resolved or is under control, or that he made a good faith effort to repay his remaining delinquent accounts. None of the mitigating conditions were sufficiently established by the record evidence with respect to that debt and the financial history of which it is symptomatic.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

¹¹ ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

¹² AG ¶ 2(a)

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. While he has recently repaid his small utility debt, made a single payment on his phone bill in 2012, and has an on-going repayment agreement to satisfy his delinquent taxes, he failed to produce sufficient documentation that his remaining delinquent debts have been addressed or are otherwise being satisfied in a responsible manner. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge